

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**J.D., Appellant**

**and**

**U.S. POSTAL SERVICE, MANHATTANVILLE  
STATION, New York, NY, Employer**

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**Docket No. 14-2061  
Issued: February 27, 2015**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 29, 2014 appellant filed a timely appeal from April 9 and August 12, 2014 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant sustained a back condition causally related to factors of his federal employment.

**FACTUAL HISTORY**

This case has previously been before the Board. On May 18, 2012 appellant, then a 46-year-old mail handler, filed an occupational disease claim alleging that he sustained arthritis in his hips and back causally related to factors of his federal employment. OWCP assigned the

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

claim file number xxxxxx300. By decision dated August 27, 2012, it denied appellant's claim after finding that the medical evidence did not establish that he sustained a condition causally related to the identified work factors. On September 4, 2012 appellant requested an oral hearing before an OWCP hearing representative.

On July 9, 2012 appellant filed a traumatic injury claim alleging that on May 9, 2012 he sustained an injury in the performance of duty as a result of repeatedly offloading and pushing cages and bulk mail containers.<sup>2</sup> He stopped work on May 1, 2012. OWCP assigned the claim file number xxxxxx437. The facts relevant to file number xxxxxx437, which is the subject of the instant appeal, are set forth below.

In a report dated May 4, 2012, Dr. Win Chang, a Board-certified orthopedic surgeon, related that appellant sought treatment for a May 1, 2012 employment injury. He stated, "[Appellant] had to do a lot of heavy work a few weeks ago such as pushing up to 200-pound crates offloading the truck and pushing the objects onto the elevator and uploading causing severe lower back pain to the point where he stopped work on May 1, 2012. Appellant was placed out of work by [w]orkers' [c]ompensation from his job site apparently." On examination Dr. Chang found back stiffness and pain with motion. He noted that appellant had a history of osteoarthritis, degenerative discs, and stenosis. Dr. Chang diagnosed an aggravation of chronic lower back pathology and found that appellant should not work pending evaluation by Dr. Andrew M. Peretz, a Board-certified orthopedic surgeon.

In a report dated May 8, 2012, Dr. Peretz noted that appellant experienced low back and right leg pain. He stated, "[Appellant] injured himself on May 1, 2012 after trying to push 200-pound crates." Dr. Peretz found that a November 2011 magnetic resonance imaging (MRI) scan study "showed discogenic disease and facet arthropathy, but no significant neurologic impingent." On examination he found a positive straight leg raise. Dr. Peretz diagnosed radicular pain. In a progress report dated June 14, 2012, he noted that appellant's radiculopathy had improved with therapy but that he still had a positive straight leg raise.

In a statement dated July 25, 2012, appellant attributed his injury to offloading and pushing cages without help on May 1, 2012. He asserted that the cages can be over 1,000 pounds full and 250 pounds empty. Appellant related that he had a history of low back pain due to arthritis but that he was now experiencing sharp pain radiating down his leg.

On August 2, 2012 Dr. Peretz again found a positive right straight leg test on examination and symptoms of a herniated disc. He requested authorization for an MRI scan study and diagnosed a "lumbar disc herniation to be proven otherwise."

By decision dated August 21, 2012, OWCP denied appellant's claim after finding that he had not established the occurrence of the May 1, 2012 work incident or submitted medical evidence supporting that he had a diagnosed condition due to the alleged work incident.

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<sup>2</sup> By letter dated July 17, 2012, appellant related that the date of injury was May 1, 2012 rather than May 9, 2012.

In a progress report dated August 16, 2012, Dr. Peretz related that an MRI scan study showed multilevel lumbar spondylosis and disc degeneration and mild stenosis from L2 through S1.

On September 4, 2012 appellant requested an oral hearing.

In a report dated May 17, 2012, received by OWCP on September 11, 2012, Dr. Peretz diagnosed radicular pain based on examination findings and recommended an MRI scan study.

On September 13, 2012 Dr. Jason Melnick, a Board-certified physiatrist, diagnosed low back pain, resolved right radiculopathy at S1, resolved, and work injuries. He noted that appellant was a “mail carrier offloading mail and off of work three-and-a-half months, now back.” Dr. Melnick related that an MRI scan study showed disc herniations at multiple levels, foraminal stenosis, and an annular tear.

A hearing was held on December 19, 2012. At the hearing, appellant attributed his condition to performing heavy work on April 30 and May 1, 2012 without assistance. The hearing representative determined that the July 9, 2012 traumatic injury claim, under claim number xxxxxx437, was instead an occupational disease claim as he attributed the injury to work factors that occurred over more than one shift. Appellant submitted reports dated August 3 and 16, 2012 from Dr. Peretz. The hearing representative returned the original reports to him so that he could mail him copies of the reports subsequent to the hearing. He also asked appellant to submit a copy of the MRI scan study.

On February 1, 2013 appellant submitted an August 14, 2012 MRI scan study of his lumbar spine and August 2 and 16, 2012 and January 17, 2013 reports from Dr. Peretz. The August 2012 MRI scan study revealed multilevel spondylosis, facet joint degenerative arthrosis, mild spinal canal stenosis at L2-3 and L3-4, moderate spinal canal stenosis at L4-5, mild bilateral foraminal stenosis at L4-5 and L5-S1 that was “more severe in the left side with impingement of the L5 nerve root,” and a small disc protrusion at L4-5 and L5-S1 with annular tears.

On January 17, 2013 Dr. Peretz related that appellant’s work at the employing establishment “would have [a] direct effect on his low back pain.”

In a decision dated February 4, 2013, OWCP hearing representative affirmed the August 21, 2012 decision in file number xxxxxx437. He found that appellant was claiming an occupational disease rather than a traumatic injury in file number xxxxxx437 as the identified work factors occurred over more than one day. The hearing representative determined that the medical evidence was insufficient to show that he sustained a diagnosed condition due to the identified work facts in either claim. He indicated that he had held the record open for appellant to submit additional evidence and to resubmit the reports from the hearing but that “[n]either additional evidence nor the marked exhibits were received.”

In an order dated March 21, 2014, the Board set aside the February 4, 2013 OWCP decision.<sup>3</sup> It determined that the hearing representative failed to consider the medical reports

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<sup>3</sup> *Order Remanding Case*, Docket No. 13-1569 (issued March 21, 2014).

from Dr. Peretz dated August 2 and 16, 2012 and January 17, 2013 and the August 12, 2012 MRI scan study. The Board consequently remanded the case for OWCP to properly review the evidence and issue an appropriate final decision.

By decision dated April 9, 2014, OWCP found that appellant had not established that he sustained an injury offloading and pushing cages and bulk mail containers in file number xxxxxx437. It determined that the medical evidence was insufficient to show that he sustained a diagnosed condition due to the identified work factors.

On May 7, 2014 appellant requested reconsideration of the April 9, 2014 OWCP decision. In a report dated April 30, 2014, Dr. Peretz related that he was treating appellant for a low back condition. He stated, “[appellant] injured himself on May 1, 2012 after trying to push 200-pound crate[s] while at work. So, at this point, since he was having lower back and lower extremity radicular symptoms, we do feel that since he did not have it before pushing 200-pound crate[s] that this is a work-related injury and should not be considered anything but that.”

By decision dated August 12, 2014, OWCP denied modification of its April 9, 2014 decision.

On appeal appellant asserts that on May 1, 2012 he injured himself performing heavy work. He informed his supervisor and sought medical treatment right away. Appellant questions the classification of his injury as an occupational disease. He maintains that his supervisor provided inaccurate information.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an “employee of the United States” within the meaning of FECA, that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>6</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;<sup>7</sup> (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;<sup>8</sup> and (3) medical evidence establishing the

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<sup>4</sup> 5 U.S.C. § 8101 *et seq.*

<sup>5</sup> *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>6</sup> *See Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>7</sup> *Michael R. Shaffer*, 55 ECAB 386 (2004).

<sup>8</sup> *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>9</sup>

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>10</sup> must be one of reasonable medical certainty<sup>11</sup> explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>12</sup>

### ANALYSIS

Appellant alleged that he experienced pain radiating down his leg after offloading and pushing containers on April 30 and May 1, 2012. On appeal he questioned the classification of his work injury as an occupational disease rather than a traumatic injury. As appellant attributed his condition to events occurring over the course of more than one work shift, the Board finds that OWCP properly adjudicated the claim as an occupational disease.<sup>13</sup> OWCP accepted the occurrence of the claimed work factors. The issue, therefore, is whether the medical evidence establishes a causal relationship between the claimed conditions and the identified employment factors.

On May 4, 2012 Dr. Chang noted that appellant performed heavy work for some weeks pushing heavy crates and offloading and uploading objects. Appellant experienced back pain such that he had to stop work on May 1, 2012. Dr. Chang diagnosed an aggravation of chronic lower back pathology and found that appellant was disabled from work. He did not, however, directly attribute the aggravation of his low back condition to his employment. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.<sup>14</sup>

Dr. Peretz evaluated appellant on May 8, 2012 for low back and pain radiating into his right leg. He noted that appellant described his injury as occurring on May 1, 2012 after pushing heavy crates. Dr. Peretz diagnosed radicular pain. He did not, however, specifically address causation but instead merely noted appellant's description of the injury. A physician's report is

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<sup>9</sup> *Beverly A. Spencer*, 55 ECAB 501 (2004).

<sup>10</sup> *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>11</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>12</sup> *Judy C. Rogers*, 54 ECAB 693 (2003).

<sup>13</sup> An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift." 20 C.F.R. § 10.5(q).

<sup>14</sup> *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

of little probative value when it is based on a claimant's belief rather than the doctor's independent judgment.<sup>15</sup>

On May 17, 2012 Dr. Peretz diagnosed radicular pain and recommended an MRI scan study. In a progress report dated June 14, 2012, he indicated that appellant's radiculopathy had improved but that he still had a positive straight leg raise. On August 2, 2012 Dr. Peretz found a positive right straight leg test and noted that appellant had symptoms of a herniated disc. He requested authorization for an MRI scan study and diagnosed a disc herniation "to be proven otherwise." In a progress report dated August 16, 2012, Dr. Peretz determined that an MRI scan study revealed multilevel lumbar spondylosis and disc degeneration and mild stenosis from L2 through S1. In these reports, however, Dr. Peretz did not address causation and thus they are of little probative value.<sup>16</sup>

On January 17, 2013 Dr. Peretz related that appellant's work directly affected the pain in his lower back. He did not, however, provide a diagnosis or explain how any specific work factors caused or aggravated his condition. A mere conclusion without the necessary rationale explaining how and why the physician believes that a claimant's accepted exposure could result in a diagnosed condition is not sufficient to meet a claimant's burden of proof.<sup>17</sup>

In a report dated April 30, 2014, Dr. Peretz indicated that appellant sustained an injury on May 1, 2012 pushing 200-pound crates. He noted that he did not have low back pain and radiculopathy prior to pushing the crates and that, consequently, the injury resulted from employment. However, a medical opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.<sup>18</sup>

On September 13, 2012 Dr. Melnick diagnosed low back pain, right radiculopathy at S1, resolved, and unspecified work injuries. He discussed appellant's work offloading mail. Dr. Melnick diagnosed disc herniations and foraminal stenosis that was severe on the left at L5-S1, and annular tears at L4-5 and L5-S1. As he did not address causation, his report is of little probative value on the issue of causal relationship.<sup>19</sup>

On appeal appellant argues that he sustained an injury at work on May 1, 2012 and that his supervisor did not provide accurate information. An award of compensation may not be based on surmise, conjecture, speculation, or upon his own belief that there is a causal relationship between his claimed condition and his employment.<sup>20</sup> Appellant must submit a physician's report in which the physician reviews those factors of employment identified by him

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<sup>15</sup> *Earl David Seale*, 49 ECAB 152 (1997).

<sup>16</sup> *Id.*

<sup>17</sup> *See supra* note 9.

<sup>18</sup> *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

<sup>19</sup> *See Conard Hightower*, *supra* note 14.

<sup>20</sup> *D.E.*, 58 ECAB 448 (2007); *George H. Clark*, 56 ECAB 162 (2004); *Patricia J. Glenn*, 53 ECAB 159 (2001).

as causing his condition and, taking these factors into consideration as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.<sup>21</sup> He failed to submit such evidence and therefore failed to discharge his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not sustained an injury to his back causally related to factors of his federal employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 12 and April 19, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 27, 2015  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>21</sup> *D.D.*, 57 ECAB 734 (2006); *Robert Broome*, 55 ECAB 339 (2004).